IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8842 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAPUBHAI AMBARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8842 of 2002

MR GM AMIN for Petitioner No. 1

MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/11/2002

ORAL JUDGEMENT

#. Heard learned advocate Mr.G.M.Amin on behalf of the petitioner and learned AGP Mr.H.C.Patel appearing on behalf of the respondents.

#. In the present petition, RULE has been made returnable on 23rd October, 2002 by order dated 16th October, 2002. The brief facts of the present petition as quoted in the petition are as under :-

The petitioner is the owner and occupier of the land bearing Block No.411/A admeasuring 32 Guntha having old Survey No.305 /1 situated in the sim of village Bopal, Taluka and District Ahmedabad. It is case of the petitioner that the grand father of the petitioner was Police Patel and in lieu of the services rendered by the Police Patel, the petitioner's grand father was exempted from payment of revenue and an entry No.558 dated 3-4-1940 was mutated granting exemption to the petitioner's grand father Ambaram Jesinhbhai and others. Thereafter another Entries were mutated bearing 2237 and 2293 wherein the land was mutated in the name of the State. The petitioner had made an application for cancellation of the said entry before the Collector. The Collector had sought guidance from the State Government and therefore the State Government had directed the petitioner to pay Rs.19,42,200/-. The said order was challenged by the petitioner before Special Secretary but the Special Secretary had returned the papers on the ground that the order passed by the Collector was pursuant to the order passed by the State Government and therefore no appeal or revision is maintainable against the order of the State Government and therefore, this petition is filed by the petitioner.

#. Learned advocate Mr.Amin has submitted that the petitioner had made submissions that in the Entry No.291/1 to 291/4 and Survey No.305 / 2 where the common property of the ancestors of the petitioner's grand father and their brothers and common Entry No.558 was mutated wherein the same orders were challenged before the Special Secretary bearing Appeals Nos.12/98 to 15/98. The Special Secretary allowed those appeals falling in the Entry No.558. It is case of the petitioner that petitioner's Survey No.305 /1 is also falling in Entry No.558 and therefore, all the petitioners are similarly situated and lands are also mutated by the same entry and facts are also identical and the entry was also common. It is also submitted that in other cases, the Special Secretary had entertained the appeals and allowed those appeals by setting aside the orders of the Collector but the appeal preferred by the petitioner was returned on the ground that direction has been issued by the State Government.

#. Learned AGP Mr.H.C.Patel appearing on behalf of the respondents has submitted that the Collector has passed the order on the basis of receiving instructions from the Revenue Department of State Government dated 17th May, 1997 and therefore the Collector has not committed any error. However, he submitted that in other cases if similar orders of the Collector challenged by the other persons before the Special Secretary and said revisions are allowed by the Special Secretary, then the petitioner may approach the Special Secretary against the order of the Collector.

#. Learned advocate Mr.Amin for petitioner submitted that if the order passed by the Collector itself is contrary to law as the land in question has been exempted from payment of revenue as per the entry made in the revenue record, therefore, such direction cannot be issued by the State Government. He, therefore, submitted that let the Collector himself decide afresh the entire matter and also consider the order passed by the Special Secretary in Revision Application No.12/98 to 15/98.

#. In view of above submissions advanced by learned advocates for the parties, it is clear that the Special Secretary has considered in detail the Revision Application Nos.12/98 to 15/98, of which, the Revision Application No.12/98 is relating to Survey No.291/1 and Block No.384 wherein the present petitioner was the respondent No.2. It has come on record that entry No.558 dated 3-4-40 was also considered by the Special Secretary in his order and therefore, according to my opinion, let the Collector shall examine the entire mater afresh after considering the order passed by the Revisional Authority in Revision Applications Nos.12/98 to 15/98 dated 11th October, 1999. In above view of the matter, the order passed by the Collector dated 29th August, 1997 requires to be quashed and set aside.

#. In the result, present petition is allowed. The order passed by the District Collector, Ahmedabad dated 29th August, 1997 is hereby quashed and set aside with direction to the District Collector, Ahmedabad to decide the matter afresh in light of the order passed by the Special Secretary in respect of Revision Application Nos.12/98 to 15/98 dated 11th October, 1999 and to pass appropriate order in accordance with law after giving reasonable opportunity of being heard to the respective parties within period of three months from the date of receiving the copy of this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

Date : 27-11-2002 [H.K.Rathod, J.]

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